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VIA ECF FILING

The Honorable Analisa Torres
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *Graham, et. al v. National Beverage Corp.*, No. 19-cv-873

Dear Judge Torres:

Plaintiffs in the above-referenced case write to request permission to publicly file a redacted copy of their pre-motion letter regarding their anticipated motion for summary judgment, as well as their accompanying Rule 56.1 statement and Defendant's response thereto.

The standards for filing documents under seal in this Circuit were first set forth in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). In that case, the Second Circuit stated that the “common law right of public access” attaches to “judicial documents”, which are those documents “relevant to the performance of the judicial function and useful in the judicial process.” *Id.* In deciding requests such as this one, the Court needs to balance competing considerations against the right of public access. *Id.* at 120. Valid competing considerations exist where the disclosure of confidential information would subject a party to “financial harm” or cause a party “significant competitive disadvantage.” *Standard Inv. Chartered Inc. v. Fin. Indus. Reg. Auth., Inds.*, 347 Fed App'x 615, 617 (2d Cir. 2009).

Here, the proposed redacted information has been designated “highly confidential – attorneys’ eyes only” by Defendant and various third parties, on the ground that the information constitutes trade secrets and are sensitive and proprietary information, the disclosure of which could have significant competitive impact on the designating parties’ business. *See Awestruck Mktg. Group, LLC v. Black Ops Productions, LLC*, 16-cv-3639 (RJS), 2016 WL 8814349, at *2 (S.D.N.Y. June 20, 2016) (granting motion to seal client list because it “contains sensitive and proprietary information that is not generally publicly available and that, if revealed, could cause significant competitive harm”); *Encyclopedia Brown Prods., Ltd. v. HBO, Inc.*, 26 F. Supp. 2d 606, 613-14 (S.D.N.Y. 1998) (granting request to seal confidential business information and trade secrets that

were commercially valuable to defendants because disclosure would cause irreparable harm, outweighing the public's interest in access to it). Plaintiffs take no position as to Defendant's and third parties' designations.

Pursuant to this Court's Individual Rules, Section IV(A)(ii), contemporaneously filed herewith are the proposed redacted documents (publicly filed), and the unredacted documents with proposed redactions highlighted (filed under seal). In addition, copies of all unredacted documents have been submitted to Court and counsel via electronic email.

For reasons stated above, Plaintiffs respectfully request leave to publicly file a redacted copy of the referenced documents.

Respectfully submitted,

GREG COLEMAN LAW PC

/s/ Greg Coleman _____

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GRANTED. The proposed redactions consist of proprietary information concerning the formulation of Defendant's products. Defendant's interest in protecting that sensitive information outweighs the presumption of public access to judicial documents, at least while the Court is merely considering the parties' pre-motion letters.

SO ORDERED.

Dated: August 28, 2020
New York, New York



ANALISA TORRES
United States District Judge